IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 20 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

KISMAT PVT. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 20 of 1987
MR BB NAYAK FOR MR MANISH R BHATT for Appellant.
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 27/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1. At the instance of the Commissioner of Income Tax, the Income Tax Appellate Tribunal, Ahmedabad, Bench "C" has referred the following question for the opinion of this Court :

"Whether on the facts and in the circumstances of the case, the Tribunal has not erred in law in deleting the interest imposed U/s.216 of the I.T.Act?"

2. The assessment order under reference is of 1980-81 and the relevant accounting year is calendar year 1979.

3. The Income Tax Officer levied the interest under section 216 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), at sum of Rs.14,697/- for under estimating income in the first two instalments. The said order was confirmed by the Commissioner of Income Tax (Appeals). However, the Tribunal, applied the ratio of the A.P.High Court decision in the case of A.C.I.T. vs. Vazirsultan Tobacco Company Ltd. 122 I.T.R.251, as the said decision was solitary decision on the point, and held that as the income had correctly been estimated interest under section 216 of the Act was not chargeable.

4. Mr.B.B.Nayak, learned Counsel for the Appellant Revenue appeared and submitted that the Division Bench decision of the A.P.High Court has been overruled by the Full Bench of the same High Court in the case of C.I.T. vs.Rayalaseema Mills Ltd. 228 I.T.R.477. Therefore, it was submitted that the decision of the Tribunal was incorrect in light of the legal position stated by the Full Bench of A.P.High Court. Though served there is no appearance on behalf of the respondent assessee.

5. The Tribunal has specifically held that the issue is being decided on the basis of legality and it is not necessary to decide the issue on merits of the case. In the case of Vazirsultan (Supra), the Division Bench of the A.P.High Court laid down that for attracting section 216 of the Act, the Income Tax Officer was bound to find that the assessee had under estimated advance tax payable and thus reduced the amount payable in either of the first two instalments and it was not sufficient that the advance tax happened to be underestimated by reason of the fact that the current income had been underestimated as compared to the actual income ascertained at the end

of the year. The Full Bench has categorically laid down that - " therefore it follows that if the underestimation of advance tax is due to underestimation of income or due to any other reasons, the provisions of section 216 would be attracted".

6. In light of the aforesaid position in law the Tribunal had clearly fallen into an error when it held that there was underestimation of advance tax only on the basis of underestimation of income and hence, the provisions of section 216 of the Act were not attracted. We, therefore, hold that the Tribunal was not correct in deleting the interest imposed under section 216 of the Act. The question referred to the Court is thus answered in the negative i.e. in favour of the revenue and against the assessee. It will be necessary for the Tribunal to adjudust its decision under section 260(1) of the Act after hearing both the sides on merits of the matter while giving effect to the opinion rendered in this Reference.

7. The Reference is disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt